



Interagency Task Force on Worker Classification

First Annual Report

December 31, 2020

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On September 11, 2020, Governor Parson issued *Executive Order 20-15* creating the Interagency Task Force on Worker Classification.

The mission of the task force was charged with the following:

- Facilitating communication of investigations and enforcement of worker misclassification matters by the Department of Labor and Industrial Relations, Department of Revenue, Department of Commerce and Insurance, and other relevant agencies. This includes, but is not limited to:
 - Examining and evaluating existing misclassification enforcement by agencies;
 - Facilitating sharing amongst the Task Force members of information related to suspected worker misclassification violations, in a timely manner as permitted by law;
 - Developing recommendations for pooling, focusing, and targeting investigative and enforcement resources;
 - Assessing existing methods, both within Missouri and in other jurisdictions, of preventing, investigating, and taking appropriate enforcement actions against worker misclassification violations, and to develop best practices for participating agencies to improve their prevention and enforcement efforts;
 - Working cooperatively with business, labor, and community groups interested in reducing worker misclassification, including but not limited to:
 - Seeking ways to prevent worker misclassifications, such as through the further dissemination of educational materials and community outreach regarding the legal difference between independent contractors and employees; and
 - Enhancing mechanisms for identifying and reporting worker misclassification where it does occur.
 - Increasing public awareness and community outreach to explain the illegal nature of and harms caused by worker misclassification; and
 - Reviewing statutes and regulations related to worker misclassification and recommending any appropriate changes to relevant legislation or administrative rules.

The Task Force was further directed to report back to the Governor by December 31st of each year with a final report due by the end of 2024.

First Meeting – November 19, 2020

The first meeting of the Interagency Task Force on Worker Classification was convened by Anna Hui, Director of the Missouri Department of Labor and Industrial Development (DOLIR) and task force chair. Due to the existence of a state of emergency, as declared by the Governor, the task force members as well as the press and members of the public were invited to join the meeting via WebEx/phone.

All members of the Task Force were present.

1. Anna Hui, Director, Missouri Department of Labor and Industrial Relations (DOLIR)
2. Chlora Lindley-Myers, Director, Missouri Department of Commerce and Insurance (DCI)
3. Ken Zellers, Director, Missouri Department of Revenue (DOR)
4. Josh Foster, Office of the Missouri Attorney General (AGO)
5. Spencer Clark, Acting Director, Department of Labor and Industrial Relations, Division of Employment Security (DES)
6. Colleen Vetter, Director, Department of Labor and Industrial Relations, Division of Workers' Compensation (DWC)
7. Thomas French, Acting Director, Department of Labor and Industrial Relations, Division of Labor Standards (DLS)
8. Joe Hudson, Public Member representing workers
9. Eric Nau, Public Member representing business

Chair Hui provided an overview of the role of the Task Force as set forth in the Governor's Executive Order 20-15.

Task Force members were invited to introduce themselves and offer comments related to their respective departments and industries. See "Task Force Member Summaries" below.

Task Force Member Comments: The following members offered comments related to their positions on the issues assigned to the task force.

DOLIR:

DES – DES uses the 20 factor test known as the IRS common law test to examine whether workers are employees or independent contractors. A worker is an employee if they are under the will and control of the business. It is sufficient if the business has the right to control the worker. It is important to properly classify workers so employers do not have an unfair advantage. DES supports interagency agreement. DES also does outreach to businesses on this issue and maintains a webpage, <https://labor.mo.gov/offthebooks>, dedicated to worker to worker misclassification.

DLS – The Division of Labor Standards helps ensure that Missourians are safe on the job and receive wages pursuant to state and federal law. DLS consists of five sections: Wage and

Hour, On-Site Safety and Health Consultation, Mine and Cave Safety, Workers Safety, and Research and Analysis. DLS determines and enforces Missouri Child Labor and Minimum Wage Laws and administers Prevailing Wage law for the state of Missouri. DLS's primary responsibilities are assuring child safety, resolving pay disputes, and providing information to the public, particularly information about workplace accident prevention and the Missouri mine and cave industry.

While DLS helps Missouri employers comply with a variety of laws designed to protect worker safety and pay, it is important to note that Missouri has no wage collection law. Therefore, DLS has no statutory authority to determine if a worker's classification or enforce any such determination. Should someone call DLS with a concern that involves a worker's classification, DLS typically refers the caller to DES. If a caller indicates that he or she may have a claim of workers' compensation, in addition to questions about worker classification, DLS may refer the caller to DWC, as appropriate. Callers with questions regarding contractor status or an employer's tax obligations towards its workers may be referred to the IRS or to USDOL. DLS staff work diligently to make sure that callers find the resources they need, whether within its own division or by working with fellow divisions and colleagues in the federal government.

DWC – Most Missouri employers are required to carry workers' compensation insurance. Generally, independent contractors are not covered under the Workers' Compensation Act (Chapter 287, RSMo.). The Division of Workers' Compensation recognizes the importance of properly classifying workers so that no employer has an advantage for failing to insure its workers' compensation liability. The Division works to create a level playing field between employers, and also makes sure employees have coverage if they are injured. As such, the Division of Workers' Compensation's Fraud and Non-Compliance Unit often evaluates worker classification as part of the investigations it conducts. The tests used for determining whether a worker is an employee or independent contractor have been developed through statutes, rules, and case law.

DOR – In examining and auditing withholding returns, the Department of Revenue (DOR) reviews an employer's classification of workers as "employees" (supported by issuance of Forms W-2) or "independent contractors" (supported by Forms 1099).

When DOR does make a determination about classification, it is based on "20 factors" recognized by DOLIR and the IRS. These factors, together, are used to determine the employer's degree of control and the worker's independence. They can be summarized under three categories, including behavioral, financial, and type of relationship.

DOR generally gives indirect guidance on this topic. A withholding tax FAQ about classification on DOR's website gives a link to a website for DOLIR's Missouri Division of Employment Security. DOR's Employer's Tax Guide refers to the IRS Circular E (also called Publication 15) for the definition of "employee." Publication 15, in turn, refers to a supplement, IRS Publication 15-A, for more information.

The following documents represent resources DOR references for determining a worker's classification:

1. DOR FAQ regarding classification of a worker (includes a link to Division of Employment Security website).
2. Employment Security webpage on Worker Misclassification, with two sections (“For Workers” and “For Employers”).
 - a. IRS 20-factor test
 - b. Assessment
3. DOR State of Missouri Employer’s Tax Guide
4. IRS Publication 15 (2020), also called Circular E
5. IRS Publication 15-A (Supplement to Pub. 15)

DCI - DCI reported that all classifications for workers compensation are derived from the classification schedule of the National Council on Compensation Insurance (NCCI) based in Boca Raton, Florida. NCCI uses the unified classification methods for all states participating, of which Missouri is one. The classification methodology is for non-monopolistic states (states that have their own rating bureau and handle their own classifications and rates). Each year the council presents their updates to DCI for approval in both the open market, as well as the residual market. The residual market is utilized by business who cannot obtain coverage in the open market or companies who have sustained large losses such that their loss ratio is above one.

Mr. Joe Hudson (Public Member Representing Workers) – Worker classification in the construction industry is very different than in almost any other business climate in Missouri, or around the country. Construction workers are a very transient group and therefore are more susceptible to being misclassified as subcontractors, or not classified at all and paid off the books altogether, giving unscrupulous employers an unfair bidding advantage.

I am hopeful that the work of the task force, as we dig into this process, will focus on the ability of State agencies to stop cheating contractors. This includes holding accountable those general contractors who turn a blind eye to the fraud being perpetrated by their subcontractors right under their noses, in order to level the playing field for businesses that play by the rules.

Second Meeting – December 16, 2020

The second meeting of the Interagency Task Force on Worker Classification was convened by Anna Hui. Due to the existence of a state of emergency, as declared by the Governor, the task force members as well as the press and members of the public were invited to join the meeting via WebEx/phone.

All members of the Task Force were present. The first annual report was unanimously approved.

The meeting was adjourned.